

SECTION 3. PUBLIC RECORDS AND INFORMATION

A. WHAT IS A PUBLIC RECORD?

City records, for the most part, are open and available to the public under the California Public Records Act ("PRA").¹²

The PRA concerns the ability of members of the public to have access to public records maintained by various state and local agencies, including the City. The term "public records" is defined in subdivision (e) of Government Code Section 6252 of the PRA to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." This definition is "nearly all-encompassing" and its legislative history indicates that it was "intended to cover every conceivable kind of record that is involved in the governmental process and . . . pertain to any new form of record-keeping instruments as it is developed."¹³

B. PUBLIC POLICY FAVORS DISCLOSURE

The general policy of the PRA, like the federal Freedom of Information Act upon which it is modeled,¹⁴ favors disclosure of public records.¹⁵ Indeed, in enacting it, the state legislature found and declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."¹⁶ But, as the court in *Black Panther Party v. Kehoe*¹⁷ noted:

If citizenship in a functioning democracy requires general access to government files, limited but genuine interests also demand restricted areas of nonaccess. Decisional law on the subject accepts the assumption that a statute calling for general disclosure may validly define reasonably restricted areas of nondisclosure, provided that the latter are justified by genuine public policy concerns.

¹² Gov. Code §§ 6250 *et seq.*

¹³ 58 Ops. Cal. Atty. Gen. 629, 633-634 (1975), quoting A Final Report of the *California State Assembly Statewide Information Policy Committee* on the California Public Records Act of 1968 (Mar. 1970), 1 Appendix to Journal of the Assembly (Reg. Sess. 1970) at p. 7.

¹⁴ 5 U.S.C. §§ 552 *et seq.*

¹⁵ Gov. Code § 6250.

¹⁶ Gov. Code § 6250.

¹⁷ 42 Cal. App. 2d 645, 655 (1974).

The PRA thus strikes a balance between "the public's right to know" and the need to maintain areas of nondisclosure for certain types of government records.¹⁸ The PRA basically provides that, except as otherwise provided, public records are to be open to inspection at all times during the office hours of public agencies,¹⁹ and that any person may receive a copy of any identifiable public record upon request and payment of a prescribed fee.²⁰

This general right of public inspection, must be considered together with Government Code Section 6254 which sets forth numerous categories of disclosure-exempt material which permit an agency not to disclose particular records otherwise falling within the PRA's definition.²¹ One such category includes records exempt from disclosure pursuant to federal or state law.²² The legislature added Article 2²³ to the Government Code to assist members of the public and local agencies in identifying state statutes which may exempt certain records from disclosure. The list appears in Government Code Section 6276 but it is not inclusive of all exemptions.²⁴ In addition, a "residual category" of confidential records is described in Government Code Section 6255 which permits an agency to withhold a record from disclosure under the PRA, where "on the facts of [a] particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." This balancing test can be very fact intense and challenging.

C. RESPONDING TO PRA REQUESTS

As is apparent, the obligation of the City under the PRA is to produce existing documents (within the meaning of the PRA). Nothing in the PRA requires the City to conduct research, create documents that do not exist at the time of the request, or to produce records of documents that are not reasonably identified or described. The City is required to take the following actions in response to a PRA request:

1. Determine within ten days after receipt of request (verbal or written) whether the request, in whole or in part, seeks copies of disclosable records and immediately notify the person making the request of such determination and the reasons therefor.

¹⁸ 64 Ops. Cal. Atty. Gen. 575, 579 (1981).

¹⁹ Gov. Code § 6253, subd. (a).

²⁰ Gov. Code § 6253, subd. (b); See 69 Ops. Cal. Atty. Gen. 129, 131 (1986); 64 Ops. Cal. Atty. Gen. 575, 579-580.

²¹ Gov. Code § 6254; *Black Panther Party v. Kehoe* 42, Cal. App. 2d at 656.

²² Gov. Code § 6254(k).

²³ Commencing with Gov. Code § 6275.

²⁴ Gov. Code § 6275.

2. Make available all documents for inspection or copying that are responsive to the request and not exempt from disclosure. Nothing in the PRA may be construed as permitting an agency to delay or obstruct the inspection or copying of public records.²⁵
3. Copy and make available all responsive documents upon payment of a fee.
4. If the person making the request agrees, provide a summary of the information contained in existing documents when these documents are voluminous or in a form that is not easily reproducible.
5. If the request is denied, the City must justify withholding any record by demonstrating the record in question is exempt under the express provisions of the PRA, or the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.²⁶ The notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.²⁷
6. If the request for inspection or copies of public records is in writing, and the request is denied in whole or in part, the response shall be in writing.

Because the person making the request is obligated to pay for copying costs, we have recommended that City staff adhere to the following procedures in responding to PRA requests:

1. Acknowledge receipt of the request, and if the request is verbal, ask that person to put the request in writing. (The person is not obligated to put the request in writing.)
2. Consult the City Attorney's Office whenever there is a question of whether a document is exempt from disclosure, whenever the document is labeled Attorney-Client Privilege, and whenever the document pertains to litigation or threatened litigation.
3. Advise the requesting party of a time and place when the responsive documents will be available for inspection and/or copying.
4. Advise the requesting party of the cost of copying the responsive documents in lieu of the foregoing option.

²⁵ Gov. Code § 6253.

²⁶ Gov. Code § 6255.

²⁷ Gov. Code § 6253.

5. If appropriate, advise the requesting party that the documents are voluminous or in a form that they are not easily reproducible and that the requesting party has the option to pay for a City staff's summary.

D. RECORDS IN ELECTRONIC FORMAT

If the identifiable public record that is not exempt from disclosure is in an electronic format, the information shall be made available in any electronic format in which the City holds the information. A copy of an electronic record shall be provided in the format requested, if the City uses that format to make copies for its own use or to other agencies.

The cost of duplication is limited to the direct cost of producing the copy of the record in electronic format. However, the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if (1) the City is required to produce a copy of an electronic record that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record.

The City is not required to reconstruct a record in an electronic format if the City no longer has the record in electronic format. If the record request is in both electronic, and non-electronic format, the City may inform the requester the information is in electronic format. Nothing in the PRA may be construed as permitting the City to make the information available only in an electronic format. The City is not required to release an electronic record in the electronic form held by the City if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

E. PUBLIC RECORDS ACT VIOLATIONS

When the City refuses to supply records, the requesting person may bring an action in Superior Court to compel disclosure. If the court determines the records must be turned over, the City is required to pay attorneys' fees and court costs. If the City prevails, it is entitled to attorneys' fees only if the court finds that the request was "clearly frivolous." Because of this attorney's fee rule, seldom are records exempted from disclosure. Usually, refusal to disclose is based upon the privacy rights of an employee or applicant.

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